

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1343

B
PAS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

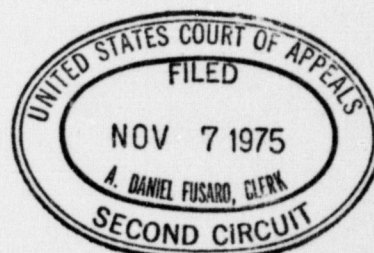
-against-

CARLOS FAYAD,

Defendant-Appellant.

----- X

APPENDIX FOR DEFENDANT-APPELLANT



LOUIS A. TIRELLI
Attorney for Defendant-Appellant
52 South Main Street
Spring Valley, N.Y. 10977
(914) 352-4247

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

ROBERT O'BRIEN,
PAULA DALLAL and
CARLOS FAYAD, also known as
Carlos Forero,

Defendants.

- - - - - X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 7th day of March, 1975, within the Eastern District of New York, the defendants ROBERT O'BRIEN and PAULA DALLAL, did knowingly and intentionally distribute approximately Twenty-one (21) grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT TWO

On or about the 30th day of April, 1975, within the Eastern District of New York, the defendants ROBERT O'BRIEN, PAULA DALLAL and CARLOS FAYAD, also known as Carlos Forero, did knowingly and intentionally distribute approximately Twenty-eight (28) grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT THREE

On or about the 21st day of May, 1975, within the Eastern District of New York, the defendants ROBERT O'BRIEN and CARLOS FAYAD, also known as Carlos Forero, did knowingly and intentionally possess with intent to distribute approximately Two Hundred Twenty-one (221) grams of cocaine hydrochloride a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT FOUR

On or about and between the 7th day of March, 1975 and the 21st day of May, 1975, within the Eastern District of New York, the defendants ROBERT O'BRIEN, PAULA DALLAL, and CARLOS FAYAD, also known as Carlos Forero, did knowingly and intentionally combine and conspire to distribute quantities of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1). (Title 21, United States Code, Section 846).

A TRUE BILL.

FOREMAN

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

United State of America vs.

United States District Court for

EAST DISTRICT OF NEW YORK

DEFENDANT

M'FILMED

CARLOS FAYAD a/k/a Carlos Forero

DOCKET NO.

75 CR 495

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH 9 DAY 5 YEAR 1975

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Louis Tirelli, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY. in Count s 3 and 4

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S.C. Sec. 841(a)(1) 846 and T-18, U.S.C. Sec. 2, in that on or about and between March 7, 1975 and May 21, 1975, the defendant, with others, did knowingly and intentionally possess and did conspire to distribute quantities of cocaine hydrochloride, a Schedule II narcotic drug controlled substance

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, he appeared in the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years on count 3, and in addition shall serve a special parole term of 15 years on condition that he leave the United States and not return during such parole term.

SPECIAL
CONDITIONS
OF
PROBATION

IT IS ADJUDGED on Count 4 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 5 years, such sentence to be served concurrently with sentence imposed under Count 3 of the indictment and in addition shall serve a special parole term of 15 years on condition that he leave the United States and not return during such parole term which is to be served concurrently with special parole term imposed under count 3.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

Thom C. Clitt

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
SEP 5 1975

TIME A.M.

75CR 495

PLATT, J.

25-460

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S. BENAR

ROBERT O'BRIEN,
PAULA DALLAL and
CARLOS FAYAD, also known as
Carlos Forero

CLOSED

For Defendant: DALLAL:
Court-appointed counsel:

Peter Passalacqua
32-60th St. - Bklyn.
832-2534

Kenneth Kaplan-919 3rd A
N.Y. 10022 688-0147

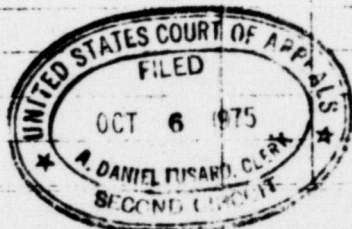
Did distribute cocaine

ABSTRACT OF COURT

AMOUNT

CASH RECEIVED AND DISBURSED

DATE	DESCRIPTION	AMOUNT	DATE	DESCRIPTION	AMOUNT
Fire,	7-12-75	100.00	7-12-75	Hotel Appel - Carlos	5.00
Clerk,	7-12-75	100.00	7-12-75	Hotel Appel - Paula	5.00
Marshal,	7-12-75	100.00	7-12-75	Hotel Appel - Carlos	5.00
Attorney,	7-12-75	100.00	7-12-75	Hotel Appel - Paula	5.00
Commissioner's Court,					
Witness,					



DATE

DESCRIPTION

- 6-17-75 Before JUD, J. - Indictment filed - Bench Warrant ordered and issued as to deft DALLAL.
- 6/18/75 Before PLATT, J. - Case called - Deft Dallal present without counsel. Def produced in Court on a Bench warrant - deft arraigned and enters a plea not guilty - Bail set at \$5,000.00 P.R. Bond - bench warrant vacated - case to 6/20/75
- 6-27-75 By Platt, J - Order appg counsel filed (DALLAL) signed by Judge Platt 6-18 but received in Clerks Office June 27, 1975.
- 7-3-75 Before PLATT, J - case called - defts & counsels present - Fayio Ochon sworn as interpreter - adjd to July 7, 1975 for trial.
- 7/7/75 Letter from Kenneth Kaplan, esq. filed re: substitution as counsel for

75CR 495

7/7/75 Before PLATT, J. - Case called - Defts and counsel present - Interpreter
Told of need and begun - Jurors selected and sworn - Deft O'Brien after
advised of his rights by the court and on his own behalf enters a pl
guilty to count 1 - sentence adjd without date - bail contd - Hearing or
to suppress ordered and begun - Trial adjd to 7/8/75 at 9:15 A.M.

7/8/75 Before PLATT, J. - Case called - Trial resumed - Hearing on motion to sup
resumed - Deft Fayad's motion to suppress - motion argued - denied - h
concluded - Trial resumed - Trial contd to 7/9/75

7/9/75 Before PLATT, J. - Case called - Defts and counsel present - Trial resume
Trial contd to 7/9/75

7/10/75 Before PLATT, J. - Case called - Defts and counsel present - Trial resume
Trial contd to 7/14/75

7/11/75 75 M 1222 is inserted in CR file.

7-14-75 Before PLATT, J. - Case called - Trial resumed - Deft Dallal motion
for a directed verdict - motion denied - Deft Fayad motion to
dismiss counts 2 and 4 - denied - Trial contd to July 15, 1975.

7/15/75 Before PLATT, J. - Case called - Defts and counsel present - Trial resume
Trial contd to 7/16/75

7-16-75 Voucher for compensation of counsel filed (DALLAL)

7-16-75 Before PLATT, J. - Case called - Defts Fayad & Dallal present with att
Defts were called to stand - denied - court charges Jury - requests to ch
alternates - deliberated - Jurors sworn - Jury retires to deliberate -
Jury returns with a verdict of guilty on counts 1, 2 & 4 as to deft
PAULA DALLAL and a verdict of guilty on counts 3 and 4 and not g
on count 2 as to deft FAYAD. Jury called - jury discharged - bail re
at \$10,000 r.s. for deft PAULA DALLAL - to be co-signed by her par
and a \$5,000 surety bond as to bail for deft CARLOS FAYAD - trial
concluded - sentences adjd without date.

7-16-75 By PLATT, J. - Order of sustenance filed (15 persons - lunch)

7-16-75 7 stenographic transcripts filed dated: 2 at July 7, July 8, July
July 10, July 14 and one dated July 15, 1975) placed in 75 CR-495.

7-21-75 75 M 1222 is inserted in CR file.

7-23-75 Notice of Motion filed, nat. for a new trial, etc. (Paula Dallal)
forwarded to Chambers.

7-24-75 Notice of Motion filed for a new trial etc (deft Fayad) forwarded to
Chambers.

8-4-75 Voucher for compensation for expert services filed (FAYAD)

- 9/5/75 Before J. T. J. - Case called - Deft and counsel present - Deft O'B sentenced on count 1 pursuant to T-18, U.S.C. Sec. 3551, for treatment and supervision in a Federal Youth Correction facility for a term 5 years on condition that the defendant be confined in such facility for a period of 6 months, the execution of remainder of sentence confinement is suspended and the deft is placed on probation for a of 4 years under T-18, U.S.C. Sec. 5010(a). On motion of A.U.S.A. counts 2, 3 and 4 are dismissed - Deft FAYAD sentenced on count 4 for a period of 5 years on each count to run concurrently, sentenced to a special parole term of 15 years (under ~~provision~~) on condition that the deft leave the U.S. and not return during parole term.
- 9/5/75 Judgment and Commitment filed - certified copies to Marshal (FAYAD)
- 9/5/75 Judgment and Commitment and Order of Probation filed - certified to Probation and Marshal (O'BRIEN)
- 9-5-75 Before J. T. J. - case called - adjd to 9-19-75 (sentence of deft DALLAL)
- 9-10-75 Certificate of Judgment of Committee is read and filed. Deft DALLAL is delivered to the Federal Youth Correction Facility, N.Y.
- 9-11-75 Court reply to Deft's motion to set aside verdict of guilty.
- 9-16-75 By J. T. J. - Order filed releasing bail (ROBERT O'BRIEN)
- 9/19/75 Before J. T. J. - Case called - Deft DALLAL and counsel present - Deft sentenced on counts 1, 2, and 4 for treatment and supervision pursuant T-18, U.S.C. Sec. 3551(b) until discharged by the Federal Youth Correction Division of the Board of parole as provided in T-18, U.S.C. Sec. 5017(b) - deft contd on bail pending appeal.
- 9/16/75 Judgment and Commitment filed - certified copies to Marshal (DALLAL)
- 9/22/75 Notice of appeal filed (FAYAD)
- 9/22/75 Pocket entries and duplicate of notice of appeal mailed to court of appeals
- 9-23-75 Stereograph transcript filed dated July 15, 1975 (pgs 1005 to 1174) placed in this criminal file. 75 CR 460 relates.
- 9-25-75 Notice of Appeal filed (DALLAL)
- 9-25-75 Pocket entries and duplicate of Notice of Appeal mailed to the Court of Appeals (DALLAL)

DATE

REFERENCE

10-2-75

Adm. Serv. Div. of the G. of A. filed that the record be destroyed on 10/2/75.

10/3/75

Record was destroyed and mailed to court of appeals.

10/3 75

Heath, Susan

Charge

13 1
2 marshalled some evidence as to the evidence and proof
3 elicited again on the topic of entrapment as to showing
4 a possible predisposition.

5 I ask you to counter that by so marshalling of
6 evidence indicating there is no predisposition to
7 commit the crime charged.

8 THE COURT: No.

9 MR. KAPLAN: One thing more --

10 THE COURT: I marshalled a portion of the
11 Government's contentions to illustrate what I was
12 talking about but I labelled it as such.

13 MR. KAPLAN: I ask the Court to charge if the
14 evidence against the defendant is equally consistent
15 with innocence as with guilt and the jury must adopt
16 the construction in favor of the innocence of the
17 defendant.

18 THE COURT: I think that was encompassed in
19 my charge. The evidence is equally balanced and that
20 is for the jury to decide.

21 MR. TIRELLI: I felt it wasn't clear to the
22 jury that they could find one defendant guilty and
23 another defendant innocent.

24 Maybe I didn't properly submit it.

25 THE COURT: If there is any doubt about that I

will be glad to take that up with the jurors.

MR. TIRELLI: You did say it but I was thinking that maybe it was not clear enough.

THE COURT: You want me to say you can find either of the defendants guilty or one defendant guilty and one not guilty?

MR. KAPLAN: I object to **the reiteration**.

THE COURT: I agree. If he wants it done now, and if you both want it done I will do it.

MR. KAPLAN: I do not.

MR. TIRELLI: I bow to the superior wisdom of the two of you.

MR. KAPLAN: That is all.

THE COURT: All right. bring the jury in.

(The jury entered the courtroom at 1:20 p.m.)

THE COURT: All right, the alternate juror is excused with the thanks of the Court.

If you have anything in the jury room now please retrieve it now and take your card and have your lunch down at the jury room across the hall and check out for the day. Thank you very much for your services.

As you saw it became necessary to use one but not both alternates.

RECEIVED
U. S. ATTORNEY

Nov 7 1 28 PM '75

EAST. DIST. N. Y.

R. C. Green